

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Applications of:)	
)	
CENTER FOR COMMUNITY ARTS, INC.)	File No. BNPL-20010615AZI
)	Facility ID No. 134095
For a Construction Permit for a New LPFM)	
Station at Cape May, NJ)	
)	
PRODUCE MINISTRIES, INC.)	File No. BNLP-20010615AIB
)	Facility ID No. 135163
For a Construction Permit for a New LPFM)	
Station at Rio Grande, NJ)	
)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 17, 2005

Released: June 9, 2005

By the Commission: Commissioners Copps and Adelstein issuing a joint statement.

I. INTRODUCTION

1. The Commission has before it the captioned, mutually exclusive applications of Center for Community Arts, Inc. ("CCA") and Produce Ministries, Inc. ("Produce"), seeking construction permits in the Low Power FM ("LPFM") Broadcast Service in the Cape May, New Jersey, area. In accordance with our procedures,¹ the Commission published notice of the applications' tentative selectee status.² Produce filed an informal objection on March 15, 2005, which CCA opposed on April 6, 2005.

II. DISCUSSION

2. *Produce Informal Objection.* In its informal objection, Produce alleges that CCA's Board of Directors has had more than a 50 per cent ownership interest change since the time CCA originally filed its application. Produce contends that CCA, therefore, has violated Section 73.871 of the Commission's rules which proscribes the filing of major amendments after the close of the pertinent filing window.³ In opposition, CCA argues that its bylaws dictate that CCA Board members serve three-year terms. Accordingly, there is nothing extraordinary in the fact that "in the four years since this application was originally filed about half of the board has turned over."⁴ In addition, CCA contends that there is no

¹ See *Creation of a Low Power Radio Service, Report & Order*, 15 FCC Rcd 2205 (2000); *Creation of a Low Power Radio Service, Memorandum Opinion & Order on Reconsideration*, 15 FCC Rcd 19208 (2000); and *Creation of Low Power Radio Service, Second Report & Order*, 16 FCC Rcd 8026 (2001).

² See *Public Notice, Closed Groups of Pending Low Power FM Mutually Exclusive Applications Accepted for Filing*, DA 04-679, (rel. Mar. 12, 2004).

³ See 47 C.F.R. § 73.871.

“ownership” of a non-profit organization and that the “percentage of total assets” of each board member is zero.⁵ Our review of the record reveals that out of a total of 23 board members, 12 new members have joined the CCA board since the close of the window in which its LPFM application was filed.⁶

3. Under our rules, a 50 per cent change in the ownership of an LPFM applicant would generally be considered a “major change” and would not be permissible outside of a filing window.⁷ In the present circumstances, however, we find that a waiver of this provision would serve the public interest. CCA filed its application in 2001. During the subsequent four years, CCA had no control over the timing of Commission action on mutually exclusive LPFM applications. Over this same period, the changes in the CCA board have occurred gradually, not as an outgrowth of any party’s desire to gain control over a pending radio station application.⁸ We have recently recognized that changes in LPFM governing boards are inevitable over periods as short as four years, and we thus believe it would be unreasonable to expect this applicant to have maintained its original ownership during this time.⁹ Accordingly, we recently delegated to the Media Bureau authority to waive Section 73.865, upon finding that the public interest would be served, and allow a change in the majority of an LPFM station’s governing board as long as there is no change in the organization’s mission.¹⁰ For the same reasons, we waive Section 73.871 with respect to the change in the CCA application’s board of directors, and we will deny Produce’s objection.

4. *LPFM Selection Process.* Before applying the mutually exclusive selection procedure preference to determine the number of merit points to be awarded to each applicant, we first ascertain the basic eligibility of the applicants. In order to further our diversity goals and foster local, community-based service, we do not allow any broadcaster or other media entity subject to our ownership rules to control or to hold an attributable ownership interest in an LPFM station or enter broadcast-related operating agreements with an LPFM licensee. Additionally, to foster the local nature of LPFM service, we have limited eligibility to local entities during the first two years that LPFM licenses are available. Based on the complete application record, we conclude that CCA and Produce are qualified to hold an LPFM station license.

5. Mutually exclusive LPFM applications are subject to the comparative selection procedures set forth in Section 73.872 of the commission’s rules.¹¹ This procedure awards a maximum of three points based on three criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which LPFM spectrum has been allocated.¹² Each applicant that certified that it has had an

⁴ See CCA Opposition at 1.

⁵ See *id.* at 1-2.

⁶ CCA filed an amendment reporting its board changes on November 23, 2004.

⁷ See 47 C.F.R. § 73.871(c)(3).

⁸ See generally *Constellation Communications*, 11 FCC Rcd 18502, 18512 (1996) (waiving 47 C.F.R. § 25.116 to accept major ownership amendment without issuance of a new file number to an application for a satellite authorization, where the ownership change occurred during the course of legitimate business and not for the purpose of acquiring the pending application).

⁹ See *Creation of Low Power Radio Service, Second Order on Reconsideration and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 6763, 6772 ¶ 20 (2005).

¹⁰ See *id.*

¹¹ 47 C.F.R. § 73.872.

¹² *Id.*

established community presence of at least two years' duration is awarded one point. An applicant is deemed to have an established community presence if, for a period of at least two years prior to application, the *applicant* has been physically headquartered, has had a campus, or has had 75 percent of its board members residing within 10 miles of the reference coordinates of the proposed transmitting antenna. Second, an applicant that has *pledged to operate at least 12 hours per day* is awarded one point. Third, an applicant that has *pledged to originate locally at least eight hours of programming per day* is awarded one point. For purposes of this criterion, local origination is defined as the production of programming within 10 miles of the reference coordinates of the proposed transmitting antenna.¹³ The tentative selectee is the applicant with the highest score.

6. Under this comparative selection process, the applicants are awarded the following points:

Established Community Presence. CCA is entitled to one point because it certifies that for a period of at least two years prior to the filing date of its application, it has existed as an educational institution or organization and has been physically headquartered, has had a campus, or has had 75 percent of its board members residing within 10 miles of the coordinates of the proposed transmitting antenna.¹⁴ Produce is not entitled to one point because it does not certify that it meets the requirements of being physically headquartered, having a campus, or having 75 percent of its board members residing within 10 miles of the reference coordinates of the proposed transmitting antenna for a period of at least two years prior to the filing date of its application.¹⁵

Proposed Operating Hours. Each applicant is entitled to one point because it pledges to operate at least 12 hours per day.¹⁶

Local Program Origination. Each applicant is entitled to one point because it pledges to originate at least eight hours of local programming per day.¹⁷

Total. Accordingly, CCA is entitled to three points, and Produce is entitled to two points. Thus, CCA is the prevailing tentative selectee in LPFM Mutually Exclusive Group No. 76. We conclude that grant of CCA's application would serve the public interest, convenience and necessity.

III. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, that the application of Produce Ministries, Inc. File No. BNPL-20010615AIB) IS DISMISSED. IT IS FURTHER ORDERED that the informal objection filed by Produce Ministries, Inc. against the application of Center for Community Arts., Inc. (File No. BNPL-20010615AZI) IS DENIED.

¹³ See *id.*

¹⁴ See File No. BNPL-20010615AZI ("CCA Application") at Section III, Question 1(a); see also Exhibit 7.

¹⁵ See File No. BNPL-20010615AIB ("Produce Application") at Section III, Question 1(a); see also Exhibit 7.

¹⁶ See CCA Application at Question 2; see also Produce Application at Question 2.

¹⁷ See CCA Application at Question 3; see also Produce Application at Question 3.

8. IT IS FURTHER ORDERED, that Section 73.871 of the Commission's rules IS WAIVED, and the application of Center for Community Arts, Inc. (File No. BNPL-20010615AZI) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**JOINT STATEMENT OF
COMMISSIONERS MICHAEL J. COPPS AND JONATHAN S. ADELSTEIN**

Re: Applications for Construction Permits for New LPFM Stations

We are pleased that the Commission is moving ahead to license additional low power FM radio stations. These community-based stations are licensed to churches, schools and other local organizations and can help in significant ways to meet the needs of under-represented communities. Low power benefits recording artists by providing more outlets for airplay, especially on a local or regional level. It provides community coverage in often strikingly-successful ways. To promote these local stations, we hope the Commission would also move forward on its recent proceeding on low power FM radio and consider opening a new filing window for the many noncommercial entities that want to offer new low power FM radio services wherever possible.